

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MARY WALTER, on behalf of herself and)	
all others similarly situated,)	
)	
Plaintiff,)	Civil Action No.
)	
v.)	
)	<i>ELECTRONICALLY FILED</i>
BABCOCK LUMBER, INC., a Pennsylvania)	
Corporation, CARL BORNTAEGER,)	
individually, COURTNEY BORNTAEGER,)	
individually, and R. JEFFREY KIMBALL,)	
individually,)	
)	
Defendants.)	

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441, *et. seq.*, Defendants Babcock Lumber, Inc., Carl Borntraeger, Courtney Borntraeger, and R. Jeffrey Kimball, by and through their undersigned counsel, hereby remove the above-captioned civil action, filed in the Court of Common Pleas of Allegheny County, Pennsylvania (No. GD-15-5320), to this Court. As grounds for removal, Defendants state as follows:

1. On or about April 22, 2016, Plaintiff filed a Complaint against Defendants in the Court of Common Pleas of Allegheny County, Pennsylvania, and mailed a copy of the same to Defendants' counsel. Pursuant to 28 U.S.C. § 1446, a true and correct copy of the Complaint served upon Defendants is attached hereto as Exhibit A.

2. This Notice is timely under 28 U.S.C. § 1446(b) in that it is filed within thirty (30) days after receipt by Defendants of a copy of the Complaint, the first pleading from which it could be ascertained that the case is removable.

3. In Count One of the Complaint, Plaintiff alleges breach of contract based on a failure to pay severance benefits owed. In Count Two of the Complaint, Plaintiff alleges unjust

enrichment in violation of Pennsylvania common law. In Count Three of the Complaint, Plaintiff alleges a violation of the Pennsylvania Wage Payment and Collection Law based on a failure to pay severance benefits owed.

4. Plaintiff's claims are based on alleged failures to pay benefits under a severance program, attached to Plaintiff's Complaint. Complaint, ¶¶ 10, 11, 14, 31. The alleged severance program is an employee benefit plan under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.* ("ERISA"). A claim to recover ERISA plan benefits arises under 29 U.S.C. § 1132(a).

5. This action is being removed to this Court based upon federal question jurisdiction. The United States Code provides in pertinent part that the "district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Moreover, "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or defendants, to the district court of the United States for the district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a).

6. Accordingly, this action is removable pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1331, pursuant to which this Court's federal question jurisdiction. This Court may maintain jurisdiction over Plaintiff's remaining state law claims pursuant to the doctrine of supplemental jurisdiction. *United Mine Workers v. Gibbs*, 383 U.S. 715, 726-27 (1966).

7. Additionally, because this is an action over which federal district courts have original jurisdiction, and because Allegheny County is embraced by the United States District Court for the Western District of Pennsylvania, the action is properly removed to the United States District Court for the Western District of Pennsylvania under 28 U.S.C. § 1441(a).

8. Copies of this Notice of Removal shall forthwith be served upon Plaintiff and the Clerk of Court for the Court of Common Pleas, Allegheny County, from which this matter is removed.

WHEREFORE, Defendants Babcock Lumber, Inc., Carl Borntraeger, Courtney Borntraeger, and R. Jeffrey Kimball hereby remove this action from the Court of Common Pleas, Allegheny County to the United States District Court for the Western District of Pennsylvania.

Dated: April 27, 2016

Respectfully submitted,

/s/ Peter J. Ennis

Peter J. Ennis (Pa. I.D. No. 45754)

David J. Strauss (Pa. I.D. 316912)

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